

LS 6-1870a

OGC Has Reviewed

27 November 1956

MEMORANDUM FOR: Legislative Counsel

SUBJECT : Draft Executive Order Entitled "Delegating Authority of the President under Sections 305 and 606 of the Communications Act of 1934, as amended."

1. We are returning herewith the draft Executive Order bearing the above title which we have reviewed to determine what impact it might have upon the conduct of this Agency's functions during a national emergency.

2. Our analysis of this Order and related documents leads us to conclude that insofar as legal considerations are involved, the text as now drafted is satisfactory to this Agency. To the extent that this Order relates to section 606 of the Communications Act of 1934 (47 U.S.C. 606), this Agency is not affected inasmuch as the subdivisions of that section specified in the Executive Order do not apply to governmental entities. The other section of the foregoing statute cited by this draft Executive Order is section 305(a) (47 U.S.C. 305), which exempts radio stations belonging to and operated by the United States Government from control by the Federal Communications Commission and authorizes the President to assign frequencies to such stations. This latter authority is transferred to the Director of Defense Mobilization under this draft Executive Order and in so acting the President is merely following up on Executive Order 10460, issued 16 June 1953, which provided that the Director of Defense Mobilization, with the aid of the Interdepartment Radio Advisory Committee, should assist and advise the President in assigning radio frequencies under section 305 of the Communications Act of 1934, as amended.

3. There is also attached herewith a memorandum to this Office from the Director of Communications setting forth his comments on the proposed Executive Order. Paragraph 2 of that memorandum indicates that the Director of Communications believes, as a practical matter, that the above-mentioned frequency-assignment delegation to the Director of Defense Mobilization is acceptable to the Agency. Paragraph 3 of

the memorandum from the Director of Communications indicates concern with respect to the proviso clause in section 3 of the draft Executive Order relating to the taking over or use of radio stations by the Director of Defense Mobilization. In our opinion this proviso does not relate to Government-operated stations and hence the clause does not affect this Agency. Executive Order 10312 of 12 December 1951 provides for the emergency control of Government and non-governmental radio stations when air attack may be imminent. Section 2 of that Executive Order specifies that insofar as Government radio stations are concerned the head of the department or agency involved is the official designated to control the activities of that station. This arrangement appears to give this Agency adequate freedom of action in that situation.

4. Executive Order 10460, issued on 16 June 1953, calls upon the Director of Defense Mobilization to perform his functions in the field of telecommunications with the aid or through the facilities of appropriate departments and agencies of the Government. Moreover the Director of Defense Mobilization is authorized to perform his various functions through delegations to other agencies. The foregoing provide additional assurance that there is adequate leeway in the case of the proposed Executive Order for this Agency to work out any further administrative procedures that may be found necessary.

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Assistant General Counsel

Attachments

cc: Director of Communications

OGC/NCF:jcf

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